

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**

**&**

**THE HONOURABLE MRS. JUSTICE K.HEMA**

**MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929**

**MFA.No. 1302 of 2001**

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**OPMV.254/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR**

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**APPELLANT:**

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**SAJI M.J, S/O M.V.JACOB  
MULLOOR HOUSE  
KODUVAZHANGA, NEERIKODU P.O.  
PIN - 683 511**

**BY ADV. SRI.P.T.GOVINDAN**

**RESPONDENTS:**

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- 1. LONAPPAN.K.J., KANJOORKKARAN HOUSE  
MUPPATHADAM, ALUVA**
- 2. THE ORIENTAL INSURANCE CO. LTD  
DIVISIONAL OFFICE, PATTAMANA BUILDING  
R.S. ROAD, ALUVA**

**BY ADV. SRI.VPK.PANICKER**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD  
ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**J.B. Koshy & K.Hema, JJ.**

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**M.F.A.No. 1302 of 2001**  
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**Dated this the 10th day of December, 2007**

**Judgment**

**Koshy,J.**

Appellant while riding his motor cycle sustained serious injuries in a motor accident. He claimed compensation contending that the accident occurred due to the negligent driving of the motor cycle by the first respondent which hit the scooter of the appellant. The accident occurred on 27.9.1994. F.I.R. was registered only on 10.1.1995. Scene mahazar is also seen prepared on that date. Ext.B1 is the wound certificate.

2. The tribunal considered the wound certificate, the first document with regard to the accident, and found that the accident occurred not due to the involvement of the motor cycle owned by the first respondent. Ext.A1 charge sheet was not relied on and the criminal court judgment was obtained collusively. The tribunal has considered the matter at paragraph 11 of the award as follows:

"Admittedly, the private complaint was filed few months after the alleged accident and

on the basis of that, the police registered case. I am not persuaded to place much reliance on Ext.A1, in the facts and circumstances of the case. Ext.B1 and the evidence of RW1 reveal that the earliest version given to RW1 regarding the cause of injury is that the petitioner while applying brake to avoid hitting cyclist fell into ditch and sustained injuries. There is no reference to the offending vehicle. It is true there is controversy who gave that statement to RW1. RW1 was not able to assert for the reason that is not specifically stated in Ext.B1 who had given that statement. But, she stated that usually, if the patient is conscious and oriented he will be asked the cause of injury. RW1 may have consulted the person who brought PW1 to the hospital. Ext.B1 and the evidence of RW1 reveal that the petitioner when brought to the hospital was conscious and oriented. It is not the case of the petitioner that he was unable to speak. Therefore, going by the evidence of RW1 in the normal course he would have only asked the petitioner the cause of the injury. True, in Ext.B1 it is stated that PW2 brought the petitioner to the hospital. But, PW2 has no case that he had given any statement to RW1. On the other hand, what he stated is that when the Doctor came (to attend the petitioner), they all got out of the casualty room and the Doctor asked PW1, something. Necessarily therefore, the information regarding the injury was given to RW1 by none other than the petitioner himself. There is no reason to think that somebody else gave false or incorrect information to RW1, having accompanied the petitioner to the hospital. The information given to RW1 cuts at the root of the case of the petitioner."

We agree with the above findings and we see no ground to interfere in the award. Appeal dismissed.

**J.B.Koshy**  
**Judge**

**K. Hema**  
**Judge**

vaa

**J.B. KOSHY AND  
K.HEMA,JJ.**

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M.F.A. No. 1302 of 2001  
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**Judgment**

Dated:10th December, 2007